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In re: Layt
Serial No.: 10/626,680
Filing Date: July 24, 2003
Page 3 of 12

REMARKS

Clean and marked-up versions of substitute pages 1-10 and 12 are enclosed herewith in duplicate. The substitute pages amend the application to incorporate the information requested in the Office Action, to update the description of the variety, and to make other minor amendments/corrections to the application. It is requested that pages 1-7 and 9 of the originally filed specification be canceled (*i.e.*, page 8 with the claim is retained) and replaced by the substitute pages submitted herewith.

The issues raised in the outstanding Office Action are addressed individually below.

I. Priority Claim.

As an initial matter, the Applicant notes that this application claims priority under 35 U.S.C. §119(e) from U.S. Provisional Application Serial No. 60/400,389 filed July 31, 2002. It is respectfully requested that the priority claim be acknowledged in the next office communication.

II. Information Disclosure Statement.

The PTO-1449 form submitted with the Information disclosure Statement dated January 6, 2004 was returned with the Office Action. However, Applicant notes that item 4 on the PTO-1449 form (Gazette entry (part II) for 'LM300') was not initialed by the Examiner. It is respectfully requested that the Examiner consider this reference, initial this item on the PTO-1449 form, and return a copy of the initialed form to the Applicant. A clean copy of the PTO-1449 form originally submitted January 6, 2004 and another copy of the reference listed as item 4 is enclosed herewith for the Examiner's convenience.

III. 35 U.S.C. § 102.

The Office Action states that cultivar 'LM400' is described in Australian Plant Breeders Rights application No. 2001/090 (filed April 3, 2001) and further states that these publications were available more than one year prior to the filing date of the

In re: Layt
Serial No.: 10/626,680
Filing Date: July 24, 2003
Page 4 of 12

present application. The Office Action further notes that a printed publication is not an enabling disclosure of a claimed plant unless one skilled in the art can reproduce the plant from a publicly available source. The Office Action then requests information as to when, if ever, the claimed plant was publicly available so as to evaluate whether a rejection under §102(b) should be applied.

The Applicant again notes that this application has a priority date of July 31, 2002. Further, the cited publication from the Australian Plant Breeders Rights Office was not available until August 9, 2001 and thus is not eligible to be applied as prior art under §102(b) against this application at all.

As discussed in more detail in the response to the Request for Information under 37 C.F.R. § 1.105, the plant is not yet publicly available. The plant has not yet been sold or otherwise been made available to the public anywhere in the world.

In sum, there was no enabling disclosure of the claimed plant more than one year prior to the priority date of the present application. Accordingly, there is no basis for a rejection under §102(b).

IV. Objections to the Disclosure.

The disclosure has been objected to under 37 CFR §1.163(a) for presenting less than a full, clear and complete botanical description of the plant and the characteristics that distinguish the plant from related known varieties. The particular concerns raised in the Office Action are addressed individually below.

A. Cultivar Name.

The Office Action requests that the Applicant change the name of the cultivar from 'LM400' on the basis that this cultivar name allegedly does not comply with the International Code of Nomenclature for Cultivated Plants –1980 (*hereinafter*, "the Code"). The Office Action further states that Article 4 indicates the importance of cultivar name registration for nomenclature stability; Article 31, Recommendation 31A(a), states that names composed of abbreviations, numerals or arbitrary sequences of letters except as established custom in a country or for a crop should

In re: Layt
Serial No.: 10/626,680
Filing Date: July 24, 2003
Page 5 of 12

be avoided. The Applicant respectfully disagrees with the request to change the name of the cultivar and this interpretation of the Code.

Article 31, Recommendation 31A(a) is simply a *recommendation*, and is not an absolute prohibition against cultivar names containing abbreviations, numerals or arbitrary sequences of letters. In fact, Article 33 (Definitions), Note 2, of the Code explicitly states: "Cultivar names contrary to a Recommendation are not, on that account, illegitimate."

Moreover, Article 35 of the Code states that "[e]ach cultivar has one correct cultivar name, the single name by which it is internationally known." As the Examiner has noted, an Australian application for Plant Breeders Rights has been filed for the plant under the name 'LM400'. It would be contrary to Article 35 to require that the plant be designated by a different cultivar name in the United States and Australia.

Finally, the Applicant notes that at least one other variety of *Lomandra longifolia* is sold under a name that is a combination of abbreviations, numerals and/or arbitrary sequences. 'LM300' is a variety of *Lomandra longifolia* described and claimed in United States Plant Patent Application Serial No. 10/402,494.

In view of the foregoing, the Applicant submits that 'LM400' is an acceptable cultivar name and is in compliance with the Code.

B. Dioecious.

The Office Action requests that the specification set forth whether the claimed plant is dioecious or monoecious. 'LM400' is a dioecious plant; the flowers are male, and only very rarely female. The substitute pages incorporate this information at page 3, line 31.

C. RHS Colour Chart Descriptions.

It is requested in the Office Action that the Applicant provide more meaningful color descriptions with reference to the employed RHS Colour Chart for botanical features such as the leaf blade (upper and lower surface) and the opened flower.

In re: Layt
Serial No.: 10/626,680
Filing Date: July 24, 2003
Page 6 of 12

Information on the color of the leaf blade and the flower spike are addressed below in points I and R, respectively. Reference to the employed color chart has been incorporated into the substitute pages at page 3, lines 29-30.

D. Hardiness Zone.

It has been requested in the Office Action that the Applicant import information relative to the plant hardiness zone or the heat/cold resistance for the claimed plant into the specification. The Applicant respectfully notes that this information was set forth in the original specification at page 7, lines 3-7 (substitute page 10, lines 4-9).

E. Average Height and Spread.

The Office Action requests that the average height and spread of the claimed plant be set forth in the specification. This information has been added at page 4, lines 7-9, of the substitute pages.

F. Description of the Roots.

The Office Action requests that a brief description of the roots of the claimed plant be set forth in the specification. The roots are fibrous and spreading, similar to other *Lomandra longifolia*. This information has been incorporated at page 4, lines 28-31, of the substitute pages.

G. Stolons.

It is requested in the Office Action that the Applicant set forth in the specification whether or not the claimed plant is stoloniferous or not. 'LM400' is rhizomatous, not stoloniferous. A botanical description of the rhizomes has been incorporated at page 5, lines 1-5, of the substitute pages.

In re: Layt
Serial No.: 10/626,680
Filing Date: July 24, 2003
Page 7 of 12

H. Venation Pattern and Color.

The Office Action requests that the venation pattern and color designation be indicated, if different from the rest of the leaf. The specification has been amended to indicate that the leaf venation is parallel and the color of the veins is the same as for the rest of the leaf. This information has been added at page 4, lines 15-18 of the substitute pages.

I. Color Description at page 3, line 32.

The Office Action states that the color description of the leaf as "blue/grey" at page 3, line 32, of the originally filed specification is vague and insufficient to describe the color designation. A description of the color of the upper and lower leaf surfaces with reference to the employed RHS Colour Chart have been imported into the substitute pages at page 4, lines 9-13.

J. Leaf Base, Leaf Margin and Leaf Surface Texture.

The Office Action requests that information be imported into the specification concerning the leaf base, leaf margin and leaf surface texture of the claimed plant. The leaf base is cauline, leaf margin is entire, leaf apex is tridentate and the leaf surface texture is strongly glaucous. This information has been incorporated into the substitute pages at page 4, lines 13-15.

K. Auricles.

It has been requested that the Applicant set forth in the specification a botanical description of any auricles of the claimed plant. Applicant respectfully notes that 'LM400' is not a grass and auricles are absent. The plant is "grass-like" in appearance, but is a member of Family Xanthorrhoeaceae, not Family Poaceae. The Applicant has incorporated amendments into the substitute pages to clarify this point.

L. Description at page 3, line 34.

The Office Action states that the color description of "white/green and light brown" at page 3, line 34, of the originally filed specification is vague and insufficient to describe the color of the basal shoot. A description of the color of the basal shoot with reference to the employed RHS Colour Chart has been imported at substitute page 4, lines 18-19.

M. Leaf Sheath.

The Office Action further requests that the Applicant set forth in the specification a botanical description of the leaf sheath length, type and color with reference to the employed color chart. The Applicant again notes that the claimed plant is not a grass and does not have a sheath.

N. Emerging New Leaves.

The Office Action states that the specification should set forth whether the emerging new leaves from the whorl of preceding leaves are folded or rolled. Applicants respectfully point out that the requested information is relevant to grasses, and the claimed plant is not a grass. The emerging new leaves of 'LM400' are flat. This information has been incorporated at substitute page 4, line 21.

O & V. Botanical Description of the Culm.

The Office Action requests that the specification set forth the botanical description of the culm (stem) including color, size and surface texture. It has further been requested that information regarding the flowering culm's average length and color designation be indicated in the specification. The Applicant respectfully notes that the claimed plant does not have a culm as it is not a grass.

In re: Layt
Serial No.: 10/626,680
Filing Date: July 24, 2003
Page 9 of 12

P & Q. Internodes.

It has been requested that the Applicant provide information regarding the internodes and ligule of the claimed plant. This information is not relevant to the claimed plant, which is not a grass and does not have internodes.

R. Flower Spike Color.

The Office Action states that the description of the flower spike color as "yellow" at page 4, line 2, of the originally filed specification is vague and has requested that this description be corrected to reference the employed color chart. This information has been incorporated at substitute page 5, lines 13-14.

S. Inflorescence Type.

The Office Action requests that information be provided as to the inflorescence type. The inflorescence is a spike (a panicle of clusters), made up of male flowers. This information has been imported at substitute page 5, lines 12-13.

T. Spikelet.

The Office Action requests that a botanical description of the spikelet, such as glumes, lemma, awn and palea be incorporated into the specification. This information is not relevant to the claimed plant, which is not a grass and does not have glumes, lemma, palea or awns.

U. Length of the Flower Rachis.

The Office Action states that the average length of the flower rachis should be set forth in the specification. This information has been added to the substitute pages at page 6, line 5-7.

W. Pedicle Length and Color.

The Office Action requests that the pedicle length and color designation be provided in the specification. The claimed plant does not have pedicels; the florets

In re: Layt
Serial No.: 10/626,680
Filing Date: July 24, 2003
Page 10 of 12

are sessile. This information is incorporated into the substitute pages at page 5, lines 22-23.

X. Fragrance.

The Office Action requests that the specification set forth the fragrance, if any, of the flowers and/or leaves of the claimed plant. 'LM400' has a fragrance typical of the species. The fragrance is of medium strength. This information has been added at substitute page 6, lines 24-25.

Y&Z. Lastingness of Bloom and Flowering Period.

The Office Action requests that the Applicant set forth information on the lastingness of bloom and the flowering period in a specified location of culture. Information on flowering period and lastingness of bloom in Sydney, NSW, Australia has been incorporated into the substitute pages at page 6, lines 16-22.

AA. Seed.

The Office Action requests that a botanical description of the seed be set forth in the specification. The claimed plant does not produce seed as the flowers are male. This information has been imported at substitute page 6, lines 13-14.

AB. Botanical Description of Reproductive Organs.

The Office Action requests that a botanical description of the reproductive organs such as number, size and color be provided in the specification. Information on the reproductive organs of the male florets has been incorporated into the substitute pages at page 6, lines 9-11.

V. Claim Rejection.

Claim 1 is rejected under § 112, first and second paragraphs, as not being supported by a complete and clear botanical description for the reasons indicated above with respect to the objections to the disclosure.

In re: Layt
Serial No.: 10/626,680
Filing Date: July 24, 2003
Page 11 of 12

As discussed above, the Applicant has amended the specification to provide a more complete botanical description of the plant. Accordingly, the Applicant submits that Claim 1 is fully supported by the disclosure and respectfully requests that the rejections under § 112, first and second paragraphs, be withdrawn.

VI. Requirement for Information under 37 C.F.R. §1.105.

The Applicant and assignee of this application are required to provide information "to determine when, if ever, the claimed plant variety, 'LM400', was publicly available prior to the filing date of the instant application." It is further requested that "any information available regarding the sale or other public distribution of the claimed plant variety anywhere in the world, including the date(s) of any sale or other public distribution be provided." It is further requested that a copy of the Australian Plant Breeders Rights (PBR) application number 2001/090 be provided.

As discussed above with respect to the rejection under §102(b), the claimed variety, 'LM400', has not yet been sold or otherwise made publicly available anywhere in the world.

A copy of Part 1 of the Australian PBR application 2001/090 for 'LM400' is enclosed herewith. The application was received in the Australian PBR Office on April 3, 2001 and accepted May 21, 2001. The first public mention of the variety was in the first gazetting of the Australian PBR application in the *Plant Varieties Journal* (2001), vol. 14, No. 2 (published on August 9, 2001). The Applicant has previously provided a copy of the second gazetting (*i.e.*, publication of Part 2 of the Australian PBR application) of the Australian PBR application 2001/090 in *Plant Varieties Journal* 16:2 on August 20, 2003 (see IDS dated January 6, 2004).

As a final point, the Requirement for Information states that "the assignee of the instant application is listed by UPOV as applicant, breeder and titleholder of the granted Breeder's Right." The Applicant wishes to clarify that the rights to the plant in Australia, and the Australian Plant Breeders Rights application, have been

In re: Layt
Serial No.: 10/626,680
Filing Date: July 24, 2003
Page 12 of 12

assigned to Abulk Pty Ltd. In contrast, the rights to the plant in the United States belong to, and the assignee of the instant application is, VersaScapes L.L.C.

The Applicant believes that a complete and accurate response to the Requirement for Information under 37 C.F.R. §1.105 has been provided. If the Examiner reasonably believes that any additional information is necessary to the examination of the application or would like clarification of any of the information provided above, the Examiner should contact the undersigned attorney.

VII. Conclusion.

The concerns of the Examiner having been addressed in full, the Applicant respectfully requests withdrawal of all outstanding rejections and the issuance of a Notice of Allowance forthwith. The Examiner is encouraged to address any questions regarding the foregoing to the undersigned attorney, who may be reached at (919) 854-1400.

Respectfully submitted,



Karen A. Magri
Registration No. 41,965

Enclosures (in duplicate):

Substitute pages 1-10 and 12 (clean and marked-up)
Part 1 of AU PBR appl'n 2001/090
Copy of IDS/PTO-1449 of Jan. 6, 2004 with reference 4

Customer No. 20792

Myers Bigel Sibley & Sajovec, P.A.
P. O. Box 37428
Raleigh, North Carolina 27627
Telephone: (919) 854-1400
Facsimile: (919) 854-1401

CERTIFICATE OF EXPRESS MAILING

"Express Mail" mailing label number: EV472536531US Date of Deposit: July 9, 2004
I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Sarah Brunmeier

PTO FORM 4/92

FORM PTO - 1449
LIST OF PATENTS AND PUBLICATIONS
FOR APPLICANT'S INFORMATION
DISCLOSURE STATEMENT

ATTY DOCKET 9341.22
APPLICANT: Layt
FILING DATE: July 24, 2003

SERIAL NO. 10/626,680
GROUP Unknown

UNITED STATES LETTERS PATENTS

Exr. Init.		DOCUMENT NUMBER	DATE	NAME	CLASS	SUB CLASS
	1.	US 2003/0233692 PI	12/18/2003	Layt		

COPY

FOREIGN PATENT DOCUMENTS

		DOCUMENT NUMBER	DATE	COUNTRY	CLASS	SUB CLASS

OTHER ART (INCLUDING AUTHOR, TITLE DATE, PERTINENT PAGES, ETC.)

2.	Australian Government Department of Agriculture, Fisheries and Forestry, Database entry for Australian Plant Breeders Right Application No. 2001/090 for 'LM400.' http://www.affa.gov.au/content/pbr_database/plant_detail.cfm?AID=193762
3.	Australian Government Department of Agriculture, Fisheries and Forestry, Database entry for Australian Plant Breeders Right Application No. 2001/09 2for 'LM300.' http://www.affa.gov.au/content/pbr_database/plant_detail.cfm?AID=193763
4.	Gazette entry (Part II) for 'LM300' (Australian Plant Breeders Right Application No. 2001/092), <i>Plant Varieties Journal</i> 15:3 (2002).
5.	Gazette entry (Part II) for 'LM400' (Australian Plant Breeders Right Application No. 2001/090), <i>Plant Varieties Journal</i> 16:2 (2003).

EXAMINER

DATE CONSIDERED

EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609; Draw line through citation if not in conformance and no considered. Include copy of this form with next communication to applicant.

Origin and Breeding Seedling selection: seed of *Lomandra longifolia* was collected and hundreds of thousands of plants were grown. A single plant that had a narrower leaf compared to the rest of this population was selected. It also showed a deeper green colour, drooping characteristic, prolific rhizomes and flexible non-coriaceous leaves. This plant was divided into 18 plants and potted on. From these 18 plants seeds were collected and grown. The resultant seedlings were identical in appearance to the mother plants. No off-types were detected. The seed is now used for growing 'Katrinus' plants. Selection criteria: deep green colour, medium leaf, compact weeping form, drought and cold hardiness and ornamental character. Propagation: by seed. Breeder: Todd Layt, Clarendon, NSW.

Choice of Comparators The grouping characteristics used in identifying the most similar varieties of common knowledge were – Leaf: attitude drooping, colour green. Basal Shoots: texture medium. On the basis of these grouping characteristics 'Cassica' and parent of 'Cassica' were included in the trial as comparators. The parent of 'Katrinus' was also included for the purpose of providing evidence of breeding. 'LM300' as included as a variety of common knowledge, which is an offspring of 'Katrinus'.

Comparative Trial Location: Clarendon, NSW, summer-spring 2001. Conditions: watering, controlled release fertilisers, pest and disease treatments applied as required. Trial design: pots of each variety arranged in randomised rows. Measurements: from twenty plants at random. One sample per plant for each characteristic measured.

Prior Applications and Sales

No prior applications. First Australian sale in Apr 1997.

Description: Brian Quinn, Newham, VIC.

'LM300'

Application No: 2001/092 Accepted: 21 May 2001.

Applicant: Todd Layt, Clarendon, NSW.

Characteristics (Table 21, Figure 26) Plant: growth upright, height short, distal weeping present, proliferative rhizomatous, depth of rhizomes deep. Leaf: colour green (RHS 138A, 1995), surface glabrous, attitude upright, apex indentation present, number of predominant indentation two, length of blade long, width of blade very narrow (mean 3.59mm), rigidity non-stiff (flexible), texture non-coriaceous, curvature concave to convex near base and nearly flat at apex (generally thickened and more incurving on the right-hand abaxial edge). Basal sheath: colour dark brown, distally tapering, usually tattered. Basal Shoots: texture fine, width narrow, attitude upright, arrangement cluster. Inflorescence: branching present (generally 2 at the nodes), arrangement whorled, shape of scape in cross-section oval at base and rectangular distally, length of flowering axis 15-20cm, length of non-flowering axis 8cm (partially concealed within the unseparated basal shoots). Bracts: colour transparent to straw coloured, position of bracts at the base of each flower cluster, length of bracts in comparison to flower cluster longer, sharp pointed. Flowers: colour of outer perianth off-white, colour of inner perianth cream-yellow. Other: drought and cold tolerant.

Origin and Breeding Seedling selection: seed from a plantation of *Lomandra longifolia* 'Katrinus' was collected in 1997 and grown. In April 1998 a single plant LM300 was selected that had a very fine leaf compared to the rest of this seed batch and to the parent plant. It showed also a more compact, weeping form and a deeper green leaf. In August 1999 this plant was divided into 37 pots. No off-types were detected. In July 2000, 35 of these plants were divided to form 498. Selection criteria: deep green colour, fine leaf and compact, weeping form, drought and cold hardiness and ornamental character. Propagation: by division. Breeder: Todd Layt, Clarendon, NSW.

Choice of Comparators The grouping characteristics used in identifying the most similar varieties of common knowledge were – Plant: height short. Leaf: width very narrow, colour green. Basal Shoots: texture fine. On the basis of these grouping characteristics no other similar varieties have been identified. The parental varieties 'Katrinus' and parent of 'Katrinus' were included in the trial for the purpose of providing evidence of breeding. Other varieties within same species 'Cassica' and parent of 'Cassica' were also included as they are varieties of common knowledge. *Lomandra longifolia* ssp *exilis* was excluded from the trial on the basis of the differences in the inflorescence and also because it belongs to a different sub species.

Comparative Trial Location: Clarendon, NSW, summer-spring 2001. Conditions: watering, controlled release fertilisers, pest and disease treatments applied as required. Trial design: pots of each variety arranged in randomised rows. Measurements: from twenty plants at random. One sample per plant for each characteristic measured.

Prior Applications and Sales

No prior applications. First Australian sale in Mar 2002.

Description: Brian Quinn, Newham, VIC.

Table 21 *Lomandra* varieties

	'LM300'	'Katrinus'	'Cassica'	*Parent of 'Katrinus'	*Parent of 'Cassica'
PLANT: HEIGHT	short	tall	short	tall	tall
LEAF: COLOUR (RHS, 1995)	138A	137C	143C	137C	143C
BASAL SHEATH: COLOUR	dark brown	brown	pale brown	brown	pale brown
LEAF: ATTITUDE	upright	drooping	drooping	drooping	drooping
LEAF BLADE: WIDTH (mm) LSD ($P \leq 0.01$) = 1.47					
mean	3.59 ^a	7.34 ^b	13.84 ^c	10.18 ^d	9.53 ^c
std deviation	0.50	0.98	2.93	1.36	1.99
BASAL SHOOTS: TEXTURE	fine	medium	medium	medium	coarse

Note: mean values followed by different letter codes are significantly

FORM 10/98

1. Name and Contact Details of the Applicant *The applicant is the breeder and/or owner of the variety. If the owner is not the original breeder, proof of ownership must be provided with this part of the application form (also see question 3 for more detail).*

Name of the Applicant:

(Please note that Plant Breeder's Rights will be granted under this name):

Abulk Pty Ltd.

Contact Person:

(if different from above)

TODD CART.

Contact Address:

Lot 3 Cupitts lane
Clarendon NSW

Postcode: 2256

Telephone: 1. 02 45775912 Facsimile: 02 45775736 Email: abulk@hawknet.com.au
2.

ACN or Company Registration Number (if applicable): ABN 28069936198

2. Name and Contact Details of Agent in Australia *An Australian agent is mandatory for the service of notices to overseas applicants. For Australian applicants this requirement is optional. An agent for an applicant requires authorisation to apply on the applicant's behalf - a form is attached. Please note that the name of agent listed here must be the same as in the 'Authorisation of Agent' form.*

Name of Agent:

Contact Person:

(if different from above)

Contact Address:

Postcode:

Telephone: 1. Facsimile: Email:
2.

ACN (if applicable):

3. Name and Address of the Breeder When the breeder is an employee of an organisation and the variety was bred in the course of performing duties as an employee of that organisation, then consider the organisation as the breeder* as defined in section 3(1)(c) of Plant Breeder's Rights Act 1994

Is the Applicant the breeder? ☒ Yes ☐ No, if no please answer the following questions:

Name of the original breeder: *Abulk Pty Ltd*

Address: *Lot 3 Cupitts lane
Clarendon NSW 2756*

How were the ownership rights transferred to the applicant? *Not Applicable*

☐ By assignment ☐ By Will ☐ By other means

(Please attach the copy of this document with this application)

Copy of the Document Attached? Yes ☐ No ☐

SECTION B: General Information about the Variety

4. Botanical name

Genus

Lomandra

species

longifolia

Author(s)

Labill

5. Common name

Give the common name of the species

Mat-rush

6. Proposed name for the variety

If an application for this variety has already been lodged overseas then you must use the same name except if that name is already in common usage in Australia for a different variety. You are requested to complete a DEN 1 form (attached) to avoid processing delays if the variety name or synonym are unacceptable. Please note that any name must conform with section 27 of the PBR Act and the International Code of Nomenclature of Cultivated Plants. When accepted, the varietal name is protected under PBR Act.

LM 4-CC

7. Synonym

A synonym is an alternative name for a variety first lodged overseas, when that first name is unacceptable in Australia. Please note that once accepted, the synonym is also protected. A synonym must also conform with section 27 of the PBR Act.

8. Other names

Please list any other names including breeder's code, trade name under which the variety has been known in Australia or overseas.

Breeder's Code

Trade name

Other name

9. Is the variety an Australian native species? (Tick)

Yes ☒ it is mandatory to submit a herbarium specimen to the Australian Cultivar Registration Authority (ACRA) using a Herb 1 form (available from the PBR office/website). Also please indicate the time of flowering and/or ideal time for specimen to be collected and sent to ACRA

Time of flowering is December

No ☐

10. Has this species ever been declared a noxious weed in any Australian State or Territory?

Yes ☐ give details.....No ☒

11. Country where variety originated

This question refers to the country where the breeding was done.

Australia

12. Are you under any obligation to notify the supplier/owner of the original germplasm about your intention to obtain PBR?

Yes, Notified ☐No ☐Not Applicable ☒

13. Are you required, under any agreement with your current employer/funding agency, to inform them of your intention to acquire rights to this variety? (Tick)

Yes, Informed ☐

No ☐

Not Applicable ☒

14. Prior applications in overseas countries (write 'nil' if this is the first application. attach extra sheet if necessary.)

Country filed	Date of lodgement	Application number	Current status	Variety name
Nil				

15. Priority is claimed in respect of the earliest overseas application listed above Yes ☐ No ☒

Note: Priority in Australia can only be claimed within 12 months from the date of first overseas lodgement of this variety.

16. Has the variety been sold in Australia with the breeder's consent? Yes ☐ No ☒

If yes, date of first sale...../...../.....and under what variety name?

Has the variety been sold overseas with the breeder's consent? Yes ☐ No ☒

If yes, state the country: date of first sale...../...../.....

and under what variety name?

17. List the characteristics or combination of characteristics which make this variety distinct from the 'most similar varieties of common knowledge' and its parents/ source material.

Characteristics must be capable of precise definition to establish a prima facie case that the variety is distinct. Briefly list the important distinctive characteristics of your variety against those of source material and other similar variety(ies). Please attach a photograph of the variety showing its distinct features. While at this stage a comparative photograph is not essential, you are advised to supply a comparative photograph with Part 2 application.

Name of the closest variety (ies)	Characteristic(s) in which the comparator variety(ies) is/are different	State of expression of distinctive characters in your variety	State of expression of character in the comparator variety
Examples:			
1. Maternal parent	Leaf colour	Variegated	Not variegated
2. Pollen parent	Plant height	Tall	Medium
3. 'Variety X'	Flower colour	Red	Yellow
4. 'Variety Y'	Plant habit	Compact	Spreading

Maternal or source germplasm/variety

<u>Classica</u>	<u>Width of leaf</u>	<u>Ultra fine leaf</u>	<u>Wider leaf</u>
	<u>Plant height</u>	<u>Compact & height uppin</u>	<u>Taller leaf</u>

Other parent(s). If unsure, list possible/probable male parents and a characteristic that make them distinct from the variety

<u>Katiana //</u>	<u>As above //</u>	<u>As above //</u>	

Closest variety

<u>Classica</u>	<u>As above</u>	<u>As above</u>	<u>As above</u>

Other varieties

<u>Katiana</u>	<u>Width of leaf</u>	<u>Ultra fine leaf</u>	<u>Wider leaf</u>
	<u>Plant height</u>	<u>Compact & height uppin</u>	<u>Taller height</u>
<u>LM300</u>	<u>Leaf Colour</u>	<u>Blue Colour leaf</u>	<u>Green Colour leaf</u>
	<u>Basal Shoots</u>	<u>Different Basal Shoots</u>	<u>Different Basal Shoots</u>

SECTION C: General Information about the Origin and Breeding Procedure used to produce the variety

18. (i) Origin of the variety (tick boxes and complete the relevant sections):

- ☐ controlled pollination
☐ open pollination
☐ genetic manipulation

- ☒ spontaneous mutation or sport
☐ induced mutation or sport
☐ other origin (specify) eg. seedling selection

(ii) Breeding system of the species (if known)

- ☐ Apomixis
☐ Vegetative
☐ Other

- ☒ Self pollination ☐ Not known
☐ Often self pollinated
☐ Cross pollinated

If you ticked controlled pollination go to section 18A, otherwise go to section 18B.
 Section 18C must be answered in either case.

18A For controlled pollination:

Variety/germplasm name of seed parent(s)

Breeder of seed parent(s)

Is the seed parent protected by PBR in Australia? Yes ☐ No ☐

Is the seed parent protected by PBR in another country? Yes ☐ No ☐

If Yes, particulars of the registration
 (country) (application number) (date registered)

Variety/germplasm name of pollen parent(s)

Breeder of pollen parent(s)

Is the pollen parent protected by PBR in Australia? Yes ☐ No ☐

Is the pollen parent protected by PBR in another country? Yes ☐ No ☐

If Yes, particulars of the registration
 (country) (application number) (date registered)

18B. For origin other than controlled pollination:

Variety/germplasm name of parent *Lamunden longifolia cv Cassica 71*

Breeder of parent *Todd Laxt*

Is the parent protected by PBR in Australia? Yes ☒ No ☐

Is the parent protected by PBR in another country? Yes ☐ No ☒

If Yes, particulars of the registration *Australia*
 (country) (application number) (date registered)

18C. Answer the following questions irrespective of mode of origin

Name of the original breeder(s) who conducted or directed the work *Todd Laxt*
 Main selection criteria used to develop this variety *Upright fine leaf, Compact form, Blue leaf colour*
 Property and/or town and country where the work was conducted *Clarendon and Vineyard*

19(a) Describe the breeding procedures used to initiate the new variety. Please include information on when and where the observations were first made. Also include the number of cycles of selection, mode of propagation between generations, the number generations the variety has been maintained in its present form, the occurrence of any off types and any other information that is relevant. This information will help to assess whether the activities of the breeder qualify as breeding under section 5(1) of The PBR Act. (Provide the details in a step-wise manner or in chronological order) If required, please attach additional sheets. Texts and diagrams are acceptable.

Cycle 1 October 1998 - Seed was taken from *Lemnandra longifolia* cv Cassica to grow many thousands of *Lemnandra longifolia*.

Cycle 2 January 1999. From this batch of seed it was noticed one plant mutated to form L.M.T. It was noticed from the seedling that this plant had an ultra fine leaf. This plant was grown onto a 10cm pot. It not only showed an ultra fine leaf, but also showed a much more compact form, and a very blue leaf, and a more weeping form.

Cycle 3 September 2000. This one plant was divided and grown into 13 20cm pots. No off types were noted. It was noted that it formed seed heads in late January (a few), but no viable seed was noticed. It appears at this early stage that the plant is sterile, and therefore confirms its status as a spontaneous mutation. Note: we have grown millions of *Lemnandra longifolia* from the seed of C. 35.12 and this is the only plant that has mutated in this way.

Cycle 4. This ~~cycle~~ cycle will be completed before the testing phase.

19(b) Was this variety developed by selection from source material, collected either overseas or in Australia or obtained from a Genetic Resource Centre?

☐ No - Go to Item No. 20

☒ Yes - • provide relevant passport data with this application. Data enclosed - ☐ Yes ☒ No

• Is the source material -

☐ a cultivated/obsolete variety?

☐ a land variety (one which has been traditionally cultivated by farmers for their own use)?

☐ collected from the wild?

☒ special genetic stock (eg breeding lines)? Yes Cassica

• is the source material subject to a Material Transfer Agreement? ☐ Yes (enclose a copy) ☒ No

• is the source material subject to FAO trust agreements? ☐ Yes ☒ No

• is the source material still available for inclusion in a comparative trial? ☒ Yes ☐ No

20. Is this variety a Genetically Modified Organism?

Yes ☐ Give the Genetic Manipulation Advisory Committee (GMAC) reference number for the testing of this material.

GMAC reference no. _____ Date _____

No ☒

SECTION D: General Information about the Genetic Resources Centre and DUS trial

21. Name and location of the Genetic Resources Centre (GRC) where propagating material will be maintained. A Genetic Resource Centre is a place considered by the Secretary to be suitable for the storage and maintenance of germplasm material and may include a part of a nursery set aside for the purpose of maintaining stock plants. See guidelines for additional information if the proposed GRC is outside Australia.

Abulk Pty Ltd
Lot 3 Cupitts lane
Clarendon NSW 2756

22. Please tick one of the following boxes and provide the relevant information (It is the at the discretion of the PBR office to either accept the use of overseas DUS test report or advise the applicant to conduct a comparative trial in Australia)

☒ Sites in Australia where comparative trials including this variety and the most similar known varieties will be available for inspection. Where possible, please also include source/parental material (The nominated date should be the optimum time when the examiner can verify the distinctive characteristics claimed in this application)

LOCALITY	NO. OF PLANTS	STAGE OF GROWTH	ESTIMATE PROCEED DATE
Clarendon	70	170 mm pots	February 2000

☐ Alternatively, if you intend to use an overseas DUS test report please indicate the name of the testing country, when the test was done and when the data will be available

It is the sole responsibility of the applicants to procure the test data directly from the relevant testing authority and supply a certified copy of the test report to the PBR office. If the data is already available to you then include a certified copy with this application. Once supplied the PBR office will review the data for acceptability.

TESTING COUNTRY	TEST DATE	ESTIMATED DATE WHEN DATA WILL BE AVAILABLE

23. Nominate the date when you wish the examination to occur (Tick one box): It is mandatory to provide a date. If necessary, it can be changed later in consultation with the PBR office.

☐ IMMEDIATELY (enclose examination fee in full)

☒ WHEN NOTIFIED BY APPLICANT (estimated date : 6 / 6 / 2000)

NOTE: Your application will automatically proceed to examination 12 months after the acceptance of this application unless you have applied for and been granted an extension. The examination fee will fall due 12 months after acceptance regardless of whether the variety has been examined or an extension has been granted.

SECTION E: Authorisation and Declaration

24. ☒ (We) authorise the Plant Breeders Rights Office to exchange with the Plant Breeders Rights Authorities of other countries all necessary information and material related to the variety, provided that the rights of the applicant are safeguarded.

(signature).....

25. ☒ (we) agree to the release of propagative material prior to the granting of PBR if required for comparative testing or scientific purposes, providing the material is used for no other purpose and all material relating to the variety is returned when the trials are complete.

(signature).....

26. I (We) apply for Plant Breeders Rights to the variety described in this application.

☒ We Ab. IK Hy Ltd
(Full Name)

of Lot 3 Capitts lane Charnock NSW 2756
(Address)

declare that the information given in all parts of and attachments to this application is true and correct.

[Signature]
(Signature of Applicant or Agent*)

Date 27/3/00 Print Name: TODD L...
Position in company: Director
(if applicable)

.....
(Signature of Joint Applicant)
(if applicable)

Date / / Print Name:
Position in company:
(if applicable)

* When the Agent is signing on behalf of the Applicant then the 'Authorisation of Agent' form must be signed by the Applicant

THE PENALTY UNDER SECTION 75(1)
FOR INTENTIONALLY OR RECKLESSLY MAKING A FALSE STATEMENT
IN SUPPORT OF AN APPLICATION IS SIX MONTHS IMPRISONMENT.

Form QP1(4/99)

NOMINATION OF A QUALIFIED PERSON

Nomination of a qualified person must accompany part 1 of the application for PBR

- To be completed by the applicant or their agent at the time of the initial application and attached to part 1 of the application for PBR. If accredited as a QP for the species, the applicant/agent can nominate themselves.
- If the applicant or agent is not accredited by the PBR Office as a QP there are two options available:
 - the applicant or agent can complete this form and simultaneously apply for accreditation or,
 - the applicant can select an accredited consultant qualified person from the list in appendix 3 of *Australian Plant Varieties Journal*
- It is strongly recommended that you contact the selected qualified person as soon as possible and use this form as a guide to come to an understanding with them on what role they will play in the application process.

Name of the variety LM 4-000

Name of nominated qualified person (QP) BRIAN BULMAN

Please answer all questions by ticking [] the appropriate box

The nominated QP is accredited for the species by PBR as a:		yes [<input checked="" type="checkbox"/>]	no [<input type="checkbox"/>]
• consultant qualified person		yes [<input type="checkbox"/>]	no [<input checked="" type="checkbox"/>]
• non-consultant qualified person			
• The QP will be responsible for, and certify, this application for PBR		yes [<input type="checkbox"/>]	no [<input checked="" type="checkbox"/>]
I intend the nominated QP to perform the following functions:			
• review the application documents related to the above variety first filed in another UPOV member country and make recommendations to PBR on their suitability for examination without a DUS test growing in Australia		yes [<input type="checkbox"/>]	no [<input checked="" type="checkbox"/>]
• perform those functions ticked [] in the box below if PBR requires a comparative DUS test growing in Australia as part of the application process		yes [<input checked="" type="checkbox"/>]	no [<input type="checkbox"/>]

Tick [] only those functions that the QP has agreed to perform in relation to this application

<input type="checkbox"/> • completion of part 1 of the application form <input type="checkbox"/> • determining the most similar varieties of common knowledge and the need to include source or parental material in trial. <input checked="" type="checkbox"/> • planning the test growing trial <input type="checkbox"/> • recommending the most appropriate trial site for the varieties in the trial <input type="checkbox"/> • choice of the trial site <input type="checkbox"/> • supervision of the layout and planting of the trial <input type="checkbox"/> • planting the trial <input type="checkbox"/> • care and maintenance of the trial <input checked="" type="checkbox"/> • instruction to applicant on the timing and nature of observations/measurements needed	<input checked="" type="checkbox"/> • make observations/take measurements to comply with approved DUS test guidelines <input checked="" type="checkbox"/> • perform the necessary statistical analysis of the measurements to determine DUS <input checked="" type="checkbox"/> • provide observations, data and statistical analysis of the DUS trial for the applicant to complete part 2 of the application form <input checked="" type="checkbox"/> • completion of part 2 of the PBR application <input checked="" type="checkbox"/> • verification of the field trial, observations, data and statistical analysis <input type="checkbox"/> • certification of the application <input checked="" type="checkbox"/> • provision of a standard description of variety in the PBR approved format <input type="checkbox"/> • provide a comparative slide or a colour print of the variety showing distinctness characters
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Name of applicant/agent/QP

Signature

Date

TECH. CATT

[Signature]

24-3-2001



Track & Confirm

Shipment Details

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Your item was delivered at 8:47 am on July 12, 2004 in ALEXANDRIA, VA 22313 to PATENT OFFICE. The item was signed for by M BOSTON.

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- ARRIVAL AT PICK-UP-POINT, July 10, 2004, 8:56 am, ALEXANDRIA, VA 22313
- ARRIVAL AT UNIT, July 10, 2004, 8:36 am, DULLES, VA 20102
- ENROUTE, July 09, 2004, 6:26 pm, RALEIGH, NC 27623
- ACCEPTANCE, July 09, 2004, 5:50 pm, RALEIGH, NC 27612

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